

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MATTHEW RAY RILEY,)
v.)
Plaintiff,)
v.)
JUSTIN JONES, Director, Oklahoma)
Department of Corrections, *et al.*,)
Defendants.)
Case No. CIV-10-416-D

ORDER

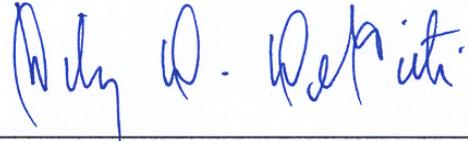
This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Judge Purcell finds that Defendant's Motion to Dismiss/Motion for Summary Judgment should be granted. Specifically, Judge Purcell finds Plaintiff's action against Defendants in their official capacities is barred by Eleventh Amendment immunity. Judge Purcell further finds Plaintiff's action should be dismissed pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), for failure to exhaust administrative remedies. Alternatively, Judge Purcell finds certain claims asserted in the Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

The case file reflects that Plaintiff has filed no timely written objection nor requested additional time to object, although he was expressly advised of his rights and the consequences of failing to object. Accordingly, the Court finds that Plaintiff has waived further review of the Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Further, upon *de novo*

consideration of the issues, the Court finds that Judge Purcell's analysis is correct and that this action should be dismissed without prejudice due to Plaintiff's failure to exhaust administrative remedies, except that Plaintiff's action against Defendants in their official capacities should be dismissed for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED that the Court adopts the Report and Recommendation [Doc. No. 41] in its entirety. Defendant's Motion to Dismiss/Motion for Summary Judgment [Doc. No. 30] is GRANTED. Judgement shall be entered accordingly.

IT IS SO ORDERED this 15th day of December, 2010.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE